BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.1212 of 2014
and
CMP(MD).N0.7638 of 2017

1.Susila

2.Mookan @ Mookaiya

3.Kohila ... Appellants/Petitioners

Vs.

1.V.Chandran

2.Cholamandalam MS General Insurance Co. Ltd.,
Dare House, 2nd Floor,
No.2, N.S.C. Bose Road,
Chennai - 1. ... Respondents/ Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP No.2185 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli, dated 20.03.2014.

For Appellants : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.S.Srinivasa Raghavan – for R2
R1 - exparte

JUDGMENT

Assailing over the judgment and decree passed by the learned Special District Judge, Motor Accident Claims Tribunal, Tiruchirappalli, in MCOP No.2185 of 2013, dated 20.03.2014, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal and the appellants/claimants, being dissatisfied with the compensation of Rs.4,30,000/- awarded by the tribunal, is before this Court, seeking enhancement. According to the appellants/claimants, because of the accident in question,

they had lost the sole bread winner of their family. However, the tribunal has awarded a meagre sum as compensation and therefore, they pray for enhancement.

4. On a perusal of records, it is seen that the notional income of the deceased has been fixed at Rs.5,000/- per month. The case of the claimants is that the deceased was working as Salesman in Kumaran Hardware Company at the time of accident and Ex.A.5 and Ex.A.6, which are the authorised letters, proves that the deceased was earning a sum of Rs.10,000/- p.m. However, no salary slip was produced before the Tribunal.

5. It is further submitted that the Division Bench of this Court, in the decision reported in 2013 (2) TNMAC 450 (DB) in the case of M.Sengabagam vs. V.Vinod Kumar and another, has held that when the claimants did not produce evidence to ascertain the income of the deceased, considering the fact that the deceased was an agriculturist and a businessman in that case, income of Rs.6,000/- was fixed.

6. In the present case on hand, the deceased was aged about 26 years and was working as Salesman, earning a sum of Rs.10,000/- per month at the time of accident, however, the tribunal has fixed the income of the deceased as Rs.5,000/- per month, which, in my considered opinion, is not reasonable. Considering the age of the deceased as well as the nature of job and also considering the above said decision of Division Bench of this Court, this Court fixes a sum of Rs.6,000/- as monthly income of the deceased, which would be reasonable. It is the further contention of the appellants that the future prospectus was also not considered. The Supreme Court, in its latest verdict, in the case of National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017, has held that 40% towards future prospectus is reasonable for persons below the age group of 40 years. Admittedly, the age of the deceased at the time of the accident was 26 years and therefore, by applying the above principle, future prospectus is fixed at 40% and since the deceased is a bachelor 50% has to be deducted towards personal expenses.

7. Further the Tribunal ought to have calculated the loss of income by applying multiplier as 17, by taking into account the age of the deceased as per Sarala Verma v. Delhi Transport Corporation, instead of 13. If the correct principles are applied, the loss of income comes as follows :

- ((Income of the deceased + future prospects) – personal expenses) is ((Rs.6,000/- + Rs.2400/- (40%)) - Rs.4,200/- (1/2)) amounts to Rs.4,200/-.
- By applying the multiplier method, it would be (Rs.4,200/- * 12 * 17) amounting to Rs.8,56,800/-.
- Therefore, the loss of income is enhanced to Rs.8,56,800/- from Rs.3,90,000/-.

8. Insofar as the other heads are concerned, no interference is required.

9. Accordingly, this civil miscellaneous appeal is allowed and

- the compensation awarded by the tribunal is enhanced and the total award amount is fixed at Rs.8,96,800/- [Rs.4,30,000/- awarded by the tribunal + Rs.4,66,800/- enhanced by this Court towards loss of dependency].
- The respondents are directed to deposit the sum of Rs.8,96,800/- [Rupees Eight Lakh Ninety Six Thousand and Eight Hundred only] towards compensation with interest @ 7.5% per annum from the date of claim petition, till the date of deposit and costs, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.
- On such deposit, the appellants/claimants are permitted to withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs.
- Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.69353.
+1cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.69252.

C.M.A(MD).No.1212 of 2014
20.06.2018

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RAM/RSK SKN/SAR 1/17.07.2018/3P/6C